

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 16-1645

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 7:00 p.m., March 21, 2016, on the application of **SHELVEST, INC.** (“Applicant”). The Applicant is requesting a special exception to establish a “utility structure” use consisting of ten photovoltaic solar panel arrays, associated inverters and equipment on approximately one third acre. The property is located on 11710 Longwoods Road, Easton, Maryland 21601 in the Agricultural Conservation (AC) zone. The property owner is the Applicant, Shelvest, Inc. The request is made in accordance with Chapter 190 Zoning, Article III, §190-16 and Article IX, §190-180 of the Talbot County Code (“Code”).

Present at the hearing were Board of Appeals members Phillip Jones, Acting Chairman, John Sewell, Margaret Young, Louis Dorsey, and Jeffrey Adelman. Richard Lesser, 507 Dover Road, Easton, Maryland 21601 appeared and presented evidence in support of the application. Jeremy Rothwell, Planner I, appeared on behalf of the Talbot County Office of Planning and Zoning. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that all members of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for special exceptions.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.
6. Copy of special exception requirements from the zoning ordinance with the Applicant’s response to each applicable requirement attached.

7. Staff Report with attachments.
8. Planning Commission Recommendation.
9. Sign maintenance agreement.
10. Revised Plat, received March 16, 2016 showing ten solar panels.
11. Plat marked "Out of Date" received February 24, 2016.
12. Letter from the State Highway Administration dated March 21, 2016.
13. Solar Array Plan, by Green Energy Systems.
14. Authorization letter, dated January 12, 2016.
15. Aerial Photograph.
16. Photograph from staff site visit on March 1, 2016.
17. Independent Procedure Disclosure and Acknowledgement Form.
18. Board of Appeals Decision No 965, dated June 10, 1996.
19. Board of Appeals Decision No. 965, dated October 2, 1995.
20. Courtland Farms Revision Request received March 16, 2016.

Mr. Lesser testified in support of the application. He explained the reason for the Revision Request (Board's Exhibit No. 20) increasing the number of proposed solar arrays from eight to ten. He said that the Applicant had originally proposed eight longer arrays consisting of 590 individual solar panels. They were designed total yield of 188,000 watts. However, they found that the available building envelope for the arrays was smaller than they anticipated so they had to redesign the arrays into ten smaller rows. As now proposed the arrays will produce about 187,000 watts. Thus, he believes the proposed revision represents a minor change in the proposed special exception.

Mr. Lesser said that his client is Robert Evans who owns Courtland Farms. This particular property is about 97 acres. Mr. Evans wishes to install a solar generating facility which will supply electricity to support the needs of all of the buildings on the farm. He coordinated with the local utility to

provide for virtual net metering of electricity so that the power generated by the installation will be credited against that used by those buildings. The site is co-located with an existing microwave tower and is close to major electrical transmission lines.

The Applicant has agreed to install a multilevel landscaping screen of the arrays. Access to the facility will be by the existing access road to the microwave tower.

The solar panels will be non-reflective and will only have to be cleaned once per year after the pollen season.

In response to a question from a Board member regarding impact on wildlife Mr. Lesser said that the proposed site is currently used in agriculture so the proposal will not replace any existing animal habitats. He said that the proposed panels will be installed with a thirty degree angle and with separation between arrays so that waterfowl will not likely confuse the solar panels with a pond.

Rain runoff from the individual panels will be readily absorbed by the pervious ground under and between the arrays.

Mr. Lesser was not aware of any studies indicating that solar arrays are hazardous for birds as are wind power generating facilities. He said he has never seen birds congregate at solar arrays.

He said the facility will not require an antenna.

Mr. Rothwell said that the Applicant has obtained site plan approval from the County but will have to have final County approval before obtaining a building permit.

There followed a discussion between the Board and Mr. Rothwell about the problem with the access road noted by the State Highway Administration (SHA) (Board's Exhibit No. 12). Mr. Rothwell said that SHA does not currently object to the proposal. Also, the Applicant's attorney is working with SHA to resolve any problem created by the prior misplacement of the microwave tower access road. Mr. Rothwell also discussed the reason the County required the Applicant to seek a special exception.

Mr. Lesser said that the Applicant could relocate the proposed solar array location to an area further away from the highway; however, that would require more disturbance of the environment for an access road and for underground power transmission cables.

Mr. Lesser then reviewed each of the special exception warrants with the Board. He said that the Applicant does not currently plan to fence the arrays but will do so if required.

He said that the lifetime of the solar panels is about thirty years. The Applicant will not oppose a condition that the solar panels be removed at the property owner's expense should they become unused.

In response to a question from the Board Mr. Lesser said that the ground around and under the panels will be seeded with grasses. He also said that it is in the interest of the Applicant to control weed growth around the panels so they are not shaded.

In response to a question about the access road creating a traffic hazard Mr. Lesser pointed out that the access road is higher than the adjoining public road and affords good visibility for drivers of vehicles using the access road. He said there is currently no gate on the access road.

No one appeared in opposition to the proposal.

There being no further evidence, the Board considered the application. Upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. The proposed use is consistent with the purposes and intent of the Talbot County Comprehensive Plan and complies with the standards of the land use district in which it is located. The Plan encourages the use of renewable energy resources.
3. The proposed use will comply with the standards of the zoning district in which it is located, except as those standards may have been modified by the granting of a variance. The proposal will use only a small portion of the subject property in an area near a major

highway. It has an existing access road and it will be in an area already utilized as a site for a 200-foot microwave communications tower.

4. The scale, bulk and general appearance of the use will be such that the use will be compatible with adjacent land uses and with existing and potential uses in its general area, and will not be detrimental to the economic value of neighboring property. With appropriate screening the facility will not be readily visible from adjacent properties. The proposed use is compatible with the nearby residential commercial, maritime, and agricultural properties.
5. The use will not constitute a nuisance to other properties and will not have significant adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and other health and safety factors or environmental disturbances. With the conditions imposed with these special exceptions the facility should not constitute a nuisance or otherwise have adverse impacts.
6. The use will not have significant adverse impact on public facilities or services including roads, schools, water and sewer facilities, police and fire protection, or other public facilities or services. Any traffic associated with the use will be minimal including traffic during installation. Adequate water and sewer facilities to service the site currently exist. Existing police and fire protection are sufficient for any foreseeable emergency needs created by the use.
7. The use will not have a significant adverse effect upon marine, pedestrian or vehicular traffic given the conditions of this approval.
8. The use will not produce traffic volumes which would exceed the capacity of public or private roads in the area or elsewhere in the County, based on the road classifications

established in Chapter 134, the Talbot County Roads and Bridges Ordinance, and other applicable standards for road capacity.

9. Any vehicle access to proposed off-street parking areas and drive-in facilities are designed to minimize conflicts between vehicular, bicycle and pedestrian traffic and to minimize impacts on adjacent properties and on public or private roads. The proposal will not result in any increase in commercial and truck traffic using residential streets and will not create a hazard to developed residential areas.
10. The proposed use will not adversely affect wildlife with respect to the site's vegetation, water resources, or its resources for supplying food, water, cover, habitat, nesting areas, or other needs of wildlife.
11. The proposed use will not adversely affect any adjacent existing agricultural uses. The use should have no such impact.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS,

RESOLVED, that the Applicant, **SHELVEST, INC.** (Appeal No. 16-1645) is **GRANTED** the requested special exception, consistent with the evidence submitted to the Board of Appeals and subject to the following conditions:

1. The Applicant shall be required to provide vegetative screening along the north, east, and south faces of the proposed photovoltaic field, as shown on the site plan.
2. The Applicant shall make applications to, and follow all of the rules, procedures, and construction timelines as outlined by the Office of Permits and Inspections regarding new construction.
3. The Applicant shall obtain Site Plan approval and a Street Tree Waiver through the Planning Commission, and comply with all conditions of said approval.

4. The Applicant shall comply with any and all SHA requirements regarding the access road to the site of the special exception use.
5. The Applicant shall control and minimize the growth of noxious weeds on the site.
6. In the event that the Applicant no longer uses the solar panel array for the generation of electricity it shall remove same and return the property so used to agricultural use unless an alternative use is approved by the Board of Appeals.
7. The Applicant shall comply with any storm water management requirements of the Code.
8. The Applicant shall obtain final Technical Advisory Committee approval of the revised Site Plan and comply with all conditions of said approval.

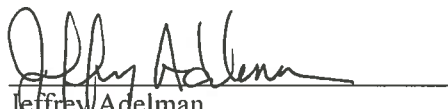
The vote of the Board of Appeals was three to two to grant the special exception subject to the aforementioned conditions.

GIVEN OVER OUR HANDS, this 22nd day of April, 2016.

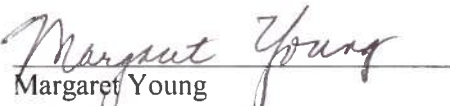
TALBOT COUNTY BOARD OF APPEALS


Phillip Jones, Acting Chairman


John Sewell


Jeffrey Adelman

The following members of the Board of Appeals voted against the motion to approve the special exception. Mr. Dorsey felt that the Applicant did not satisfy the requirement that the proposal not significantly adversely affect wildlife. Mrs. Young felt that the proposed location of the special exception use is not consistent with the Comprehensive Plan.


Margaret Young


Louis Dorsey

Board of Appeals/1645.Shelvest.SpecialException